

Exhibit A

STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

W.R. GRACE & CO.—CONN.,

Plaintiff,

v.

STATE OF WASHINGTON
DEPARTMENT OF REVENUE,

Defendant.

NO. 94-2-0079-6

STIPULATION AND FINAL ORDER
ON REMAND

I. INTRODUCTION

This matter comes before the Court on remand from the Washington Supreme Court. W.R. Grace & Co. – Conn. (“W.R. Grace”) filed this action in January 1994, seeking to enjoin collection of three tax assessments against W.R. Grace, covering tax periods from January 1980 through December 1990. The Department of Revenue's answer to the complaint asserted, among other matters, affirmative defenses of issue preclusion based on W.R. Grace's previous litigation against the Department of Revenue. The answer also asserted a counterclaim for the unpaid taxes, penalties, and interest.

An Order Denying Motions for Reconsideration and Fixing Amount of Final Judgment was entered by this court on June 20, 1997. The Department of Revenue was awarded a judgment against W.R. Grace totaling \$1,311,535.00, consisting of taxes of

STIPULATION AND FINAL ORDER ON
REMAND - 1

[/#31837 v1 - WR Grace - Stip re Tax Dispute with Washington State]

PERKINS COIE LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
(206) 583-8888

1 \$654,267 "plus [prejudgment] interest pursuant to Chapter RCW 82.32" of \$657,268.00.
2
3 Order at 1, 7.

4
5 W.R. Grace and the Department of Revenue appealed to the Washington Supreme
6
7 Court from orders this Court entered in this action on June 28, 1996, December 18, 1996,
8
9 and June 20, 1997. The Washington Supreme Court issued an opinion on April 1, 1999,
10
11 addressing the issues raised in those appeals. The Washington Supreme Court stated that it
12
13 "[did] not reach the Department of Revenue's standing or issue/claim preclusion issues,
14
15 preserving those questions for trial court resolution on remand, as may be necessary." 137
16
17 Wn.2d at 584. After deciding the *Tyler Pipe* retroactivity issue in favor of W.R. Grace and
18
19 rejecting all the taxpayers' claims for constitutional relief, the Supreme Court "affirm[ed] the
20
21 trial court judgments on these key points and remand[ed] the cases to the trial court for
22
23 further action consistent with this opinion." *Id.* at 604. On April 23, 1999, the Supreme
24
25 Court issued its mandate to this Court "for further proceedings in accordance with" the
26
27 Supreme Court's opinion.

28
29 W.R. Grace filed a petition for writ of certiorari in the United States Supreme Court
30
31 on June 30, 1999, seeking review of the Washington Supreme Court's judgment. The
32
33 Department of Revenue filed a conditional cross-petition for writ of certiorari on July 30,
34
35 1999. The United States Supreme Court denied both parties' petitions on October 18, 1999.
36
37 528 U.S. 950.

38
39 On June 27, 2000, W.R. Grace paid into the registry of the Court the sum of
40
41 \$1,470,414.20, which W.R. Grace contended was sufficient to satisfy the judgment entered
42
43 against it in this action on June 20, 1997 plus post-judgment interest. The Department of
44
45 Revenue contended that additional post-judgment interest was owed. The money remains in
46
47 the registry of the Court.

1 On April 2, 2001, W.R. Grace filed a bankruptcy petition in the United States
2 Bankruptcy Court for the District of Delaware, Case No. 01-01140.
3

4 On _____, the United States Bankruptcy Court for the
5 District of Delaware entered an order authorizing this court to enter its Final Order on
6 Remand and to disburse funds to the Department of Revenue.
7
8
9

10 II. STIPULATION

11 W.R. Grace and the Department of Revenue, through their attorneys, stipulate and
12 agree as follows:
13

14 1. The Department of Revenue agrees to waive its issue preclusion defenses in
15 this action based on *National Can Corp. v. Washington Department of Revenue*, 483 U.S.
16 232 (1987), and *American National Can Corp. v. Department of Revenue*, 114 Wn.2d 236,
17 787 P.2d 545, *cert. Denied*, 498 U.S. 880 (1990).
18
19
20
21
22
23

24 2. W.R. Grace and the Department of Revenue agree to the entry of the
25 appended Final Order on Remand in this action, denying W.R. Grace's claims for injunctive
26 or any other relief on the merits.
27
28
29

30 3. W.R. Grace and the Department of Revenue agree to waive any possible right
31 that either of them may have to appeal from the appended Final Order on Remand, or to
32 pursue any further proceedings in this action after entry of this Final Order on Remand and
33 the Satisfaction of Judgment.
34
35
36
37

38 4. W.R. Grace agrees that it will not commence or pursue any legal,
39 administrative, or other claim or action of any kind to recover the sum it has paid to satisfy
40 the judgment in this action based on taxes, interest and penalties assessed against it for tax
41 periods from January 1980 through December 1990. The Department of Revenue agrees
42 that it will not commence or pursue any legal, administrative, or other claim or action of any
43
44
45
46
47

1 kind to assess or collect any additional taxes, interest or penalties from W.R. Grace for tax
 2 periods from January 1980 through December 1990.
 3

4 5. The Department of Revenue agrees that payment of the funds in the registry
 5 of the court shall be in full satisfaction of the judgment entered against W.R. Grace on
 6 June 20, 1997 and of all counterclaims the Department may have against W.R. Grace in this
 7 action. Therefore, (a) all liens and claims of the Department against W.R. Grace in
 8 connection with this action and the underlying assessments and warrants shall be discharged
 9 and released; (b) the bond filed by W.R. Grace in connection with this action shall be
 10 exonerated and the surety released from any further obligation; and (c) the Department will
 11 file an unqualified full Satisfaction of Judgment in the form attached.
 12
 13
 14
 15
 16
 17
 18
 19
 20

21 **PERKINS COIE LLP**

22
 23
 24 _____
 25 D. MICHAEL YOUNG, WSBA #6391
 26 Attorney for Plaintiff
 27 W.R. Grace & Co. – Conn.
 28

 DATE

29 **CHRISTINE O. GREGOIRE**
 30 **Attorney General**
 31
 32
 33

34 _____
 35 DONALD F. COFER, WSBA #10896
 36 DANIEL RADIN, WSBA #8543
 37 Assistant Attorneys General
 38 Attorneys for Defendant
 39 Washington State Department of Revenue
 40
 41
 42
 43
 44
 45
 46
 47

 DATE

STIPULATION AND FINAL ORDER ON
 REMAND - 4

[/#31837 v1 - WR Grace - Stip re Tax Dispute with Washington State]

PERKINS COIE LLP
 1201 Third Avenue, Suite 4800
 Seattle, Washington 98101-3099
 (206) 583-8888

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

III. FINAL ORDER ON REMAND

Based on the Washington Supreme Court's decision in this action and the above stipulation of the parties, the Court enters the following order:

1. All claims for relief made by plaintiff W.R. Grace in this action are denied.
2. The Clerk of the Court shall pay all funds held in this registry of the court in this matter, less any Clerk's fees, to the Department of Revenue, Attn: Janet Cox, Compliance Division, P.O. Box 12440, Olympia, WA 98508.
3. All liens, claims, warrants, and assessments of the Department against W.R. Grace for taxes, interest or penalties for tax periods from January 1980 through December 1990 shall be discharged and released. The Clerk and the Department shall take all actions necessary without further order of the Court.
4. The bond filed by W.R. Grace in connection with this action is exonerated and the surety is released from any further obligation.

DONE IN OPEN COURT this ____ day of _____, 2001.

Richard D. Hicks, Judge

Presented by:

CHRISTINE O. GREGOIRE
Attorney General

DONALD F. COFER, WSBA #10896
DANIEL RADIN, WSBA #8543
Assistant Attorneys General
Attorneys for Defendant
Washington State Department of Revenue

STIPULATION AND FINAL ORDER ON
REMAND - 5

[/#31837 v1 - WR Grace - Stip re Tax Dispute with Washington State]

PERKINS COIE LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
(206) 583-8888

1
2 APPROVED FOR ENTRY, NOTICE
3 OF PRESENTATION WAIVED:
4

5 **PERKINS COIE, LLP**
6

7
8
9 D. MICHAEL YOUNG, WSBA #6391
10 Attorney for Plaintiff
11 W.R. Grace & Co. – Conn.
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

STIPULATION AND FINAL ORDER ON
REMAND - 6

[/#31837 v1 - WR Grace - Stip re Tax Dispute with Washington State]

PERKINS COIE LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
(206) 583-8888